

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO R. RODAS PORTILLO,
Plaintiff,
v.
CITY OF SHAFTER, et al.,
Defendants.

Case No. 1:23-cv-00920-JLT-BAM

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUBPOENA**

(Doc. 22)

Plaintiff Mario R. Rodas Portillo is a former county jail inmate proceeding pro se and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. On July 27, 2023, the Court screened Plaintiff's original complaint and found that it failed to comply with Federal Rule of Civil Procedure 8 and failed to state a cognizable claim for relief. The Court granted Plaintiff leave to file an amended complaint within thirty (30) days. (Doc. 8.) Plaintiff filed his first amended complaint on August 23, 2023. (Doc. 9.) On October 19, 2023, Plaintiff filed a motion to amend his complaint, along with the instant motion to subpoena an eyewitness. (*See* Docs. 20, 22.) By the instant motion, Plaintiff would like to subpoena an eyewitness in this case to a "disposition, the preliminary," and the jury trial. (Doc. 22 at 1.) For the reasons explained, Plaintiff's request for subpoena will be denied as premature.

Plaintiff has filed a motion to amend his complaint, which the Court has granted by separate order. As Plaintiff previously was advised, the Court is required to screen complaints

1 brought by prisoners seeking relief against a governmental entity or officer or employee of a
2 governmental entity. 28 U.S.C. § 1915A(a). The Court also screens complaints brought by
3 persons proceeding in pro se and in forma pauperis. 28 U.S.C. § 1915(e)(2). Plaintiff's amended
4 complaint, or any portion thereof, will be subject to dismissal if it is frivolous or malicious, if it
5 fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a
6 defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. §
7 1915(e)(2)(B)(ii). The Court has not yet screened any amended complaint. The Court will direct
8 the United States Marshal to serve Plaintiff's amended complaint only after the Court has
9 screened the amended complaint and determined that it contains cognizable claims for relief
10 against the named defendant(s). Further, no hearing or trial has been set that requires the
11 attendance of witnesses. Should a hearing or trial be set that requires witnesses, Plaintiff will be
12 notified of the procedure to obtain the attendance of witnesses. Accordingly, Plaintiff's motion
13 for subpoena is HEREBY DENIED as premature.

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15 IT IS SO ORDERED.
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Dated: September 17, 2024

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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